BARRY GOLDWATER
ARIZONA

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Admiral Stansfield Turner, Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Stan:

In anticipation of what you might discuss concerning our meeting, I had a member of my staff prepare a memorandum for me that I forgot to give you.

There is just the possibility that if you pursue your thoughts further the legislative history might become so fowled up that the whole intent could be misinterpreted. I would suggest that you ask your legal advisors to follow this memorandum.

With best wishes,

Barry

Barry Goldwater

MEMORANDUM

TO: SENATOR GOLDWATER

FROM: DAVID BUSHONG

SUBJECT: YOUR MEETING WITH ADMIRAL TURNER, TUESDAY, JULY 11, AT 2:00 P.M.

DATE: JULY 7, 1978

Admiral Turner intends to discuss intelligence community objections to various provisions of the Foreign Relations Authorization Act. The offending provisions are contained in the Senate bill (S.3076) and do not appear in the House version (H.R.12598). The Senate passed S.3076 on June 29. Senate conferees have been selected and include Senators Case, Biden and Baker from the SSCI.

ROLE OF THE AMBASSADOR - SECTION 119

The principal provision over which Admiral Turner has expressed concern is Section 119. He is concerned that this section (sponsored by Senator McGovern) may erode his ability to fulfill his obligation under the National Security Act of 1947 to protect sources and methods.

The proponents of Section 119 contend that it is merely intended to assure clarity of interpretation of the 1974 "Role

of the Ambassador Legislation". That law provides that "under the direction of the President--

> (3) any department or agency having officers or employees in a country shall keep the United States Ambassador to that country fully and currently informed with respect to all activities and operations of its officers and employees in that country,..."

Proponents read this law as consistent with the DCI's responsibility to protect sources and methods from unauthorized disclosure. They argue that ambassadors are authorized recipients as a class but may be denied access at the ad hoc direction of the President. CIA has contested this interpretation, believing that the DCI has a statutory duty to withhold at least some sources and methods information from ambassadors.

State Department and CIA attempted last fall to resolve their differing interpretations of the statutes. A "treaty" with implementing guidelines was concluded which essentially acknowledged a presumption that ambassadors should see all intelligence information but on especially sensitive cases some information could be withheld with the concurrence of the Secretary of State. Press accounts, however, suggested that CIA was not adhering to the "treaty". This engendered Foreign Relations Committee concern that their 1974 legislation was not being honored. Therefore, Section 119, which provides that the ambassadors' right to access exists "notwithstanding any other provision of law", was included in this year's authorization

act. Enactment of this section would negate any authority granted the DCI under the 1947 act to withhold information from an ambassador and leave only the safeguard that the President could make exception to the ambassadors' right of access.

On June 27, Senator Bayh advised Senator McGovern (letter attached) that we believed current statutes were clear on this issue and that the proposed amendment would merely remove any uncertainties. On June 30, Admiral Turner met with Secretary Vance and Director of OMB McIntyre on this issue. Vance reportedly continued his support for Section 119 and relied, at least in part, on Senator Bayh's letter. As the House bill does not contain a similar section, Admiral Turner can be expected to seek your support in influencing the conference to delete the provision.

INTERNATIONAL AGREEMENTS -- SECTIONS 501, 502

The CIA has also expressed concern over a provision in S.3076 which would require certain oral agreements with foreign nations to be reduced to writing and reported to the Congress. These provisions would amend the Case Act (1 U.S.C. 112b) to provide as follows:

> (1) Oral agreements would have to be reduced to writing and thereafter reported to the Congress if determined to be "international agreements".

(2) No "international agreement" (including intelligence agreements) could be signed or concluded without the prior approval of the Secretary of State or the President.

(3) The Secretary of State is expressly granted the power to determine, for the Executive Branch, what arrangements constitute "international agreements".

(4) Rules and regulations necessary to carry out the Case-Zablocki Act shall be issued by the President, through the Secretary of State.

The Senate report on S.3076 makes reference to application of these sections to intelligence agreements.

Although both State Department and CIA do not now believe that intelligence community reciprocity agreements with foreign intelligence services elevate to the level of an "international agreement", this provision is a source of potential mischief. Should the State Department guidelines which define an "international agreement" be modified to include reciprocity agreements, foreign intelligence services could be expected to resist cooperation since details of their agreements would be required to be reported to Congress.

Extending the Case Act to cover oral agreements is not consistent, according to CIA, with the purpose of the Act. The Act was intended to require that the Executive keep the Congress informed of all significant agreements with foreign governments having a binding (legally enforceable) effect on the U.S. A statutory requirement concerning oral agreements could pose a

serious practical burden in terms of what should be "reduced to writing" and in what terms.

The Agency points out that this type of provision could have a serious impact on liaison relationships, and protection of sensitive intelligence information from disclosure.

THE THIRD AGENCY RULE - SECTION 108

Under the so-called Third Agency Rule, one Executive Branch entity may not release to Congress materials prepared by another entity. This practice is a product of standard Executive Branch operating procedure which would be nullified by Section 108 of S.3076. This Section was just recently (July 6) identified by CIA as objectionable. This Section states:

"CLARIFICATION OF INFORMATION REPORTING REQUIREMENT

"Sec. 108. Section 15(b) of the Act entitled 'An Act to provide certain basic authority for the Department of State', approved August 1, 1956 (70 Stat. 890), is amended by inserting after the word 'information' the following: '(notwithstanding the department, agency, or independent establishment of origin)'".

This provision would require the State Department to provide the Foreign Relations Committee, on request, with any information in the Department's possession including intelligence documents and materials. This would erode the SSCI's unique role as conduit of intelligence information to the Senate and destroy the intelligence community's control over its own material. CIA reports that they are attempting to gain State Department's support in efforts to have this section deleted in

CIA-OVC

June 27, 1978

IN REPLY PLEASE
REFER TO Q-3853

Hon. George McGovern
Chairman
Subcommittee on International Operations
Committee on Foreign Relations
Washington, D. C. 20510

Dear George:

This is in response to your letter requesting my comments on the desirability of section 119 of S. 3076, a provision relating to the authority and responsibility of U.S. chiefs of mission.

The Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the Church Committee), predecessor to the current Select Committee on Intelligence, considered the question of the proper relationship between ambassadors and U.S. intelligence agencies, and the effect of the so-called "Role of the Ambassador Legislation" (22 U.S.C. 2680a) on that relationship. It was the recommendation of that Committee (Final Report, Book I, p. 468) that the Executive branch issue instructions pursuant to 22 U.S.C. 2680a making "clear that Ambassadors are authorized recipients of sources and methods information concerning all intelligence activities...." The Committee further recommended that ambassadors "have the personal right, which may not be delegated, of access to the operational communications of the CIA's Clandestine Service in the country to which they are assigned. Any exceptions should have Presidential approval and should be brought to the attention of the intelligence oversight committee(s) of Congress." I believe that the Select Committee on Intelligence would continue to support these recommendations.

I do not believe that these recommendations are in any respect inconsistent with the statutory responsibility of the DCI "for protecting intelligence sources and methods from unauthorized disclosure" (section 102(d)(3) of the National Security Act of 1947, 50 U.S.C. 403(d)(3)). The

statutory responsibility of the DCI extends only to unauthorized disclosure. If ambassadors are authorized recipients of sources and methods information, disclosure of such information to them cannot be aaid to be inconsistent with the DCI's statutory responsibility. I believe it implicit in the recommendations of the Church Committee that, at least after the enactment of 22 U.S.C. 2680a, ambassadors should be considered authorized recipients of sources and methods information for purposes of 50 U.S.C. 403(d)(3). Because the authority of ambassadors under 22 U.S.C. 2680a is "[u]nder the direction of the President", however, it would seem clear that the President, if he did so expressly, could make exceptions to the ambassadors' right of access to such information.

This is my understanding of the current state of the law, and I believe it comports fully with the recommendations of the Church Committee and the views of the Select Committee on Intelligence. It would appear to me that section 119 of S. 3076 does no more than to affirm this interpretation, removing any ambiguities or uncertainties that may be thought to exist.

I hope these views are of assistance to you.

Sincerely yours,

Birch Bayh
Chairman

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